PATTON & RYAN LLC

WINTER 2017 ISSUE 31

2016 was our most successful year-to-date. Our nationwide practice had us handling cases in New York, Wisconsin, Illinois, Colorado, Indiana, Missouri, Texas, Michigan, Nebraska, California, Minnesota, Ohio and Florida to name a few.

I want to congratulate our entire staff at Patton & Ryan who work tirelessly to ensure we are the most prepared law firm ready to handle any case in any jurisdiction across the country.

Patton & Ryan will host its Annual Post-Holiday Party in New York on February 16th to thank all its east coast clients. If you will be in New York that day let us know.

We look forward to celebrating with you a successful 2016 and raising a toast to bigger success in 2017.

John W. Patton, Jr.

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Patton & Ryan Parachutes In For Favorable Settlement In Admitted Liability Case

Though liability had already been admitted before Patton & Ryan parachuted into this case just one month prior to the trial date, our attorneys managed to obtain a favorable settlement after only two days of trial. The Plaintiff, a 29 year old financial consultant, suffered permanent debilitating injuries when he fell from the second story balcony of a condominium managed by our client. Plaintiff alleged that the railing he was leaning against broke away from the building due to years of neglected maintenance. As a result of his fall, he sustained multiple heel fractures, a wrist fracture, and a burst fracture of the thoracic spine that required extensive medical treatment, multiple surgeries, and months of physical therapy.

In addition to the fact that liability was already admitted, the Plaintiff had also been granted leave to seek punitive damages, but Patton & Ryan was undaunted. The punitive damages claim was predicated on the opinions of Plaintiff's liability experts and damaging testimony from an employee of the property management company. To further complicate matters, no liability experts were retained by prior counsel to rebut the opinions of Plaintiff's experts. As a result, Plaintiff proved the railing and balcony had not been properly maintained or inspected for the last 30 years. The Defense was also barred from arguing that Plaintiff's negligence contributed to the accident. Undeterred by these seemingly insurmountable challenges, Patton & Ryan fearlessly jumped in to provide the best possible defense at trial.

Patton & Ryan's trial team leveraged their years of experience in defending catastrophic claims to aggressively prepare their damages defense. By engaging in extensive witness preparation and motion practice, Patton & Ryan succeeded in barring the baseless, unsubstantiated opinions of Plaintiff's damages experts, which would have added millions to an already inflated life care plan. Plaintiff's medical experts were determined to minimize his physical recovery and disclosed that Plaintiff would require repeated and costly wrist, foot, and back surgeries in the future. In response, Patton & Ryan's trial team consulted with our retained medical experts to draft numerous *motions in limine* to bar speculative expert testimony related to future care and surgery.

After two days of vigorous and successful motion practice by the Patton & Ryan team, Plaintiffs agreed to settle for less than 40% of their previous demand. Armed with an aggressive last minute defense strategy and skillful negotiation tactics, Patton and Ryan successfully reined in a claim that was spiraling out of control and saved our client millions.

Catastrophic Loss

Successful Settlement For An OCIP

Patton & Ryan successfully prevented a potential runaway verdict in a wrongful death case arising out of a motor vehicle accident that Plaintiff alleged was the result of a highway construction project in Wisconsin. Patton & Ryan represented a consulting firm which was part of an OCIP for the highway construction project and the only entity with its primary place of business in Illinois.

Plaintiff alleged that the accident occurred because of the lane closures made as part of a highway construction project. Despite the fact that all traffic control devices and warnings were properly placed, Plaintiff decedents still failed to recognize that the highway traffic in front of them had stopped due to the construction work. Unfortunately, as a result of their inattentiveness, Plaintiff decedents rear-ended a stopped semi-truck caught in the traffic back up from the construction project.

The consulting firm which Patton & Ryan represented was not responsible for the traffic signage or closing down the lanes of the highway construction project. The consulting firm was only hired to oversee the work being performed by the general contractor and subcontractors to make sure they were on schedule and performing their work pursuant to contracts. Armed with these facts, Patton & Ryan cultivated a vigorous defense strategy.

In an attempt to circumvent Wisconsin's cap on wrongful death claims, Plaintiff brought suit in Illinois against our client, the only company involved in the project doing business in Illinois. Unlike Wisconsin, in Illinois there are no statutory caps on the amount that can be recovered in a wrongful death or survival claim. Though the accident occurred in Wisconsin, Plaintiff decedents resided in Wisconsin, and all interested parted were located there, prior counsel's attempts to avoid Plaintiff's forum shopping by removing the case to Wisconsin were unsuccessful.

After taking over the case, Patton & Ryan was able to obtain a favorable settlement prior to any oral discovery proceeding, which included closing the door to any actions against all other entities involved in the OCIP for the highway project.

Wrongful Death

Bad Faith Case Settles At High-End Resort

Patton & Ryan recently scored a large victory after obtaining summary judgment for an insurer in an insurance coverage/bad faith case regarding defects at several of the insured's high-end resorts in Colorado. The insured, a developer, engaged its broker to negotiate and secure coverage for its construction projects and ultimately purchased general liability policies from the insurer. The insurer filed a declaratory judgment complaint, and took the position that there was a total aggregate of $5 million for all of the insured's projects. Other parties to the lawsuit – the insured, broker, and the excess insurer - took the position that there was a $5 million aggregate for each project.

One year into litigation, Patton & Ryan was brought on to zealously litigate this matter. The issues involved underwriting, policy interpretation, claims handling, and bad faith. Patton & Ryan quickly got up to speed and began taking and defending dozens of depositions around the county. When it came time for expert discovery, the Patton & Ryan team successfully dismantled the theories of the insured's key expert witnesses during their depositions, greatly weakening the insured's case and leaving it no viable option other than to settle. Following suit, the broker then settled as well.

After the insured and the broker settled out, only one party remained - an excess insurer that was going to take its chances at trial. Using carefully elicited testimony from the depositions, Patton & Ryan filed a motion for summary judgment on behalf of our client insurer. The Court granted the motion for summary judgment, which effectively disposed of all matters in the case and gave our client the win. We are now pursuing costs on behalf of our client from the excess insurer.

Insurance Coverage/Bad Faith

Taming The Reptile
Patton & Ryan Mounts Vigorous Defense In "Reptile" Theory Case

Since 2009, David Ball and Don Keenan's book, *Reptile: The 2009 Manual of the Plaintiff's Revolution*, has guided plaintiffs' attorneys on how to employ a psychological priming technique known as the "Reptile Theory" to win huge verdicts. The Reptile Theory is predicated on the notion that a portion of the human psyche contains a "reptilian complex," which controls basic life functions and instinctively overpowers the cognitive and emotional aspects of the brain when survival is threatened. Ball and Keenan hypothesize that if plaintiffs' attorneys can successfully frame their cases to juries as creating a survival danger, the juries will respond by issuing verdicts meant to protect themselves and the community.

At its simplest, Reptile Theory suggests that by framing a defendant's actions as creating a perceived danger to society at large, it triggers an evolutionarily developed defense mechanism in jurors' brains. Upon perceiving the societal danger, the jurors are compelled to eliminate the danger by punishing the defendant, who they perceive as responsible. This evolutionary desire to eliminate dangers to facilitate survival overcomes logic and emotion. This strategy has been eagerly adopted by the Plaintiff's Bar because it primes jurors to issue punitive verdicts in cases where traditional punitive damages awards are not appropriate.

The Reptile Theory is frequently invoked in medical malpractice cases, where plaintiffs' attorneys attempt to get treating doctors to agree to general safety principles and then substitute those general safety principles for the legal standard of care at trial. Recently, Patton & Ryan successfully defended a hospital based pharmacy and one of its pharmacists against an aggressive plaintiffs' attorney who implemented the Reptile Theory during an eight week medical malpractice trial. Key to Patton & Ryan's successful defense was our quick identification of Plaintiffs' counsel's attempts to invoke the Reptile Theory. Armed with this knowledge, we strategically convinced the trial judge to bar Plaintiffs' Reptile Theory questioning.

With an April 11th trial date looming and expert discovery closed, Patton & Ryan parachuted into this case in late January of 2016 to defend the pharmacy and one of its pharmacists. The firm quickly got to work analyzing the facts of the case as well as the themes and strategies advanced by the Plaintiffs. Immediately, the Patton & Ryan team identified that Plaintiffs' counsel was taking its lead straight from the Reptile Theory playbook. Plaintiffs' counsel had been calculatingly working throughout discovery to develop facts and testimony it could use to prime the jury to perceive a societal danger and punish our clients. For example, Plaintiff's counsel repeatedly asked textbook Reptile Theory questions about "patient advocacy" and "a medical provider's duty to always act towards the patient's best interest."

Recognizing this tactic, Patton & Ryan filed an "Anti-Reptile" *motion in limine* and successfully barred the use of the term "patient advocate" during the trial. The impact of this ruling on the rest of the trial was tremendous as Plaintiff's counsel was prevented from conflating the concept of patient advocacy with the applicable professional standard of care. This drastically weakened Plaintiffs' case and diminished the perception that our clients' actions posed a risk to the patient community at large. In the end, it resulted in a complete defense verdict for the pharmacist and an incredibly favorable verdict against the pharmacy that was a mere 6% of the amount the Plaintiff asked the jury to award.

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AREAS OF PRACTICE

Appellate Litigation
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Insurance Coverage and
Bad Faith Litigation
Labor & Employment Law
Mass Torts
Medical Malpractice and Medical
Device Defense Litigation
Municipal Entity Defense
Product Liability
Professional Liability
Transportation & Trucking Litigation

Other News Spotlight

Patton & Ryan To Participate In The 4th Annual Howlett Cup Mock Trial Tournament

This spring, the trial lawyers of Patton & Ryan will be lending their trial expertise to Chicagoland's potential future lawyers in their preparation for the upcoming 4th Annual Howlett Cup Mock Trial Tournament. Founded in 2014 in honor of the late Honorable Michael J. Howlett, Jr., Circuit Court Judge of Cook County, the competition originally consisted of four local area Jesuit high schools but has now grown to include eight area Catholic high schools: Loyola Academy, Cristo Rey, Cristo Rey St. Martin, Christ the King College Prep, St. Ignatius College Prep, DePaul College Prep, Trinity High School and Fenwick. The competition will be held on Friday, March 31 and Saturday, April 1, 2017 at the Richard J. Daley Center in Chicago, Illinois.

This year's case, *Pat Dunn v. Chris Davies*, arose out of a fight during a semi-professional hockey game between opposing players Plaintiff Pat Dunn and Defendant Chris Davies. Dunn has now filed suit in the State of Illinois, Twenty-Fourth Judicial Circuit, Lincoln County, against Davies based on theories of negligence and battery, alleging that he sustained numerous injuries which resulted in substantial medical bills and lost work as a result of Davies's conduct during the game. Specifically, Dunn alleges that Davies struck Dunn in the head with a hockey stick during the altercation.

In preparation for the competition, the tournament organizers have developed a mock trial boot camp for high school students to learn the fundamentals of trial advocacy and competing in mock trials. On January 28, 2017, Patton & Ryan Associate Mark Javier will provide substantive instruction to the students on every stage of trial including opening statements, direct and cross examinations, and closing arguments. Additionally, Partner Paul Motz and a team of Patton & Ryan trial associates will lead group workshops conducting hands-on training for the students on effective trial techniques. The boot camp will be held at the Loyola University School of Law.